

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

IN RE: COMPLAINT AND	§	
PETITION FOR RELIEF OF	§	
BELLSOUTH	§	
TELECOMMUNICATIONS, LLC	§	DOCKET NO. 2011-304-C
d/b/a AT&T SOUTHEAST d/b/a	§	
AT&T SOUTH CAROLINA v. HALO	§	
WIRELESS, INCORPORATED FOR	§	
BREACH OF THE PARTIES’	§	
INTERCONNECTION AGREEMENT		

**I. INTRODUCTION**

This matter comes before the Public Service Commission of South Carolina (the “Commission”) on the Complaint of BellSouth Telecommunications, LLC d/b/a AT&T Southeast d/b/a AT&T South Carolina (“AT&T” or “Complainant”) against Halo Wireless, Inc. (“Halo” or “Respondent”), filed on or about July 29, 2011. Halo asserts that it is a commercial mobile radio service (“CMRS”) provider, and has executed an interconnection agreement (the “ICA”) with AT&T. The ICAs have been filed with, and approved by, this Commission.

The Commission issued a Notice of Hearing and Prefile Notice on August 8, 2011. Halo filed for bankruptcy pursuant to Chapter 11 also on August 8, 2011. In an effort to have similar proceedings heard in one forum, Halo removed this proceeding to federal court. Subsequently, the proceeding was remanded and again before the Commission. A hearing was held before the Commission in the Commission’s Hearing Room on April 18, 2012, at 9:30 am. Patrick W. Turner, Esquire and J. Tyson Covey, Esquire represented AT&T. John J. Pringle, Jr., Esquire, W. Scott McCollough, Esquire, and Jennifer M. Larson, Esquire represented Halo. M. John Bowen, Jr., Esquire and

Margaret M. Fox, Esquire represented the South Carolina Telephone Coalition. Nanette Edwards, Esquire appeared on behalf of the Office of Regulatory Staff (“ORS”). AT&T presented the testimony of J. Scott McPhee, Mark Neinast, and Raymond Drause. Halo presented the testimony of Russell Wiseman and Robert Johnson. ORS presented the testimony of Christopher J. Rozycki.

## **II. BACKGROUND/CLAIMS OF THE PARTIES**

AT&T South Carolina seeks an order allowing it to terminate its ICA with Halo based on Halo’s material breaches of that ICA, including sending wireline-originated traffic to AT&T and sending improper call information to AT&T.

Halo filed its Answer and Motion to Dismiss on January 20, 2012, contending that AT&T’s Counts I, II and III do not really seek an interpretation or enforcement of those terms. In its Motion, Halo contended that AT&T was asking the Commission to decide whether Halo is acting within and consistent with its federal license. Such a decision, Halo argued, was beyond the jurisdiction of the Commission. The Commission denied the Motion to Dismiss on February 15, 2012.

In its Answer, Halo denies that it sends wireline-originated traffic to AT&T, that it has altered or deleted any call information sent to AT&T, and that it does not owe either access charges or facilities charges to AT&T.

## **III. JURISDICTION- APPLICABLE LAW**

The Commission has jurisdiction to hear and rule upon the Complaint pursuant to S.C. Code Ann. § 58-9-1080 (authorizing the Commission to hear complaints involving

telephone utilities). Moreover, Section 25 of the ICAs explicitly grants this Commission the authority to resolve disputes that arise between the parties.

#### **IV. LEGAL ANALYSIS AND CONCLUSIONS OF LAW**

1. The testimony and evidence entered into the record in this matter establish that pursuant to its Radio Service Authorization (“RSA”) issued by the Federal Communications Commission (“FCC”), Halo is providing commercial mobile radio service (“CMRS”)-based telephone exchange service (as defined in the Communications Act of 1934, as amended by the Communications Act of 1996 (the “Act”), 47 U.S.C. § 153(54)).<sup>1</sup>

2. Because Halo operates pursuant to its RSA from the FCC and section 332(c)(3) of the Act expressly preempts state regulation of CMRS entry or rates, the Commission does not have authority to interpret this license or require that Halo have a certificate from South Carolina to operate.

3. Halo provides its services to its high volume end user customer, Transcom Enhanced Services, Inc. (“Transcom”), based on a business model ultimately directed at expanding its network to offer its services to retail end user customers.

4. Transcom is an enhanced service provider (“ESP”) providing “enhanced service,” as that term is defined in 47 C.F.R. § 64.702(a) and “information service,” as that term is defined in section 153(24) of the Act, and has been ruled to be an ESP on several occasions by federal courts of competent jurisdiction.

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<sup>1</sup> The Act was recently updated and the subsection references in section 153 were changed. This Brief uses the new section numbering.

5. As a result, Transcom’s services are not “telecommunications,” as defined in the Act, and are not subject to access charges.

6. For purposes of the ICA, all of the communications at issue originate from end user wireless customer premises equipment (“CPE”), as defined in section 153(16) of the Act, and none of the traffic is subject to exchange access under either the old FCC rules or the new rules.

7. Even if AT&T is correct in its arguments that Halo’s traffic is not subject to bill and keep, or reciprocal compensation of any kind *that does not mean they are entitled to access payment as a default.*

8. “To recover for amounts charged pursuant to their tariffs, ‘plaintiffs must demonstrate (1) that they operated under a federally filed tariff and (2) that they provided services to the customer pursuant to that tariff.’ *Alliance Communs. Coop., Inc. v. Global Crossing Telcoms., Inc.*, 663 F. Supp. 2d 807, 819 (D.S.D. 2009); *Advantel LLC v. AT & T Corp.*, 118 F. Supp. 2d 680, 683 (E.D. Va. 2000); *Frontier Communications of Mt. Pulaski, Inc. v. AT&T Corp.*, 957 F. Supp. 170, 175-76 (C.D. Ill. 1997). In order to determine whether AT&T in this case provided “access” service pursuant to its tariffs one must necessarily review the tariff itself. *See id.*

9. AT&T has failed, however, to compare the definitional and technical specifications in the tariffs to the specific arrangements in issue and then to show how they matched. There is no evidence that Halo is actually receiving “access service,” as defined in AT&T’s tariffs.

10. If the tariff does not apply – and it does not – then the tariffed rates obviously cannot be imposed. That would be a violation of the filed rate doctrine.

11. AT&T has also failed to meet its burden of proving that Halo altered or disguised Calling Party or Called Party information or otherwise did anything improper with regard to SS7 signaling.

12. Halo’s practice, which is at issue, involves merely inserting a Charge Number (“CN”) to designate the responsible billing party and is consistent with industry practice. Inserting a CN, or removing it, whether that number is a wireless number, or a wireline number, has zero effect on call charges.

13. AT&T has failed to prove its entitlement to any “facilities” charges beyond what Halo has already paid under the ICA. AT&T is seeking to charge Halo for cross-connects, multiplexing and trunk ports entirely within the AT&T building and on AT&T’s side of the POI. A plain reading of the ICA makes clear that the facilities charges AT&T seek are due only when Halo purchases the trunk group via the ICA or from the General Subscriber Services Tariff. Halo never purchased the trunk group(s) under the ICA or from the General Subscriber Services Tariff.

14. Ultimately, the testimony and evidence demonstrate that Halo has not breached its ICA with AT&T and that Halo does not owe any “access” or other charges to AT&T. Halo has paid all charges due to AT&T required under the ICA, including facilities charges.

**V. RELIEF**

1. The testimony and evidence in this case establish that the traffic at issue originated over wireless facilities, as required by the ICA between Halo and AT&T, and was signaled properly, consistent with industry standards. The traffic at issue is not subject to access charges, and AT&T has not met its burden of proving otherwise. Halo has paid all charges that are due, and Halo is not in breach of the ICA.

2. AT&T has failed to meet its burden of proof for establishing any right or grounds for the relief requested in their respective petitions. Accordingly, all of the relief requested by AT&T must be denied.

**IT IS THEREFORE ORDERED THAT:**

1. The relief requested by AT&T is denied.
2. The Parties shall continue to operate under their Commission approved interconnection agreement.

This Order shall remain in full force and effect until further Order of the Commission.

**BY ORDER OF THE COMMISSION:**

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John E. Howard, Chairman

ATTEST:

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David A. Wright, Vice Chairman

(SEAL)

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BellSouth Telecommunications, LLC )  
d/b/a AT&T southeast d/b/a AT&T )  
South Carolina v. Halo Wireless, )  
Incorporated for Breach of the Parties' )  
Interconnection Agreement )

**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day, one (1) copy of the Proposed Order of Halo Wireless, Inc. as follows:

**VIA ELECTRONIC AND FIRST-CLASS MAIL SERVICE**

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June 15, 2012  
Columbia, South Carolina